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REVIEW OF MEMORANDA ON THE HINDU LAW OF SUCCESSION ISSUED BY THE HINDU LAW COMMITTEE.

Codification, the object. The Hindu Law Committee are the latest advocates of the advisability and desirability of codifying the principles of Hindu law. The Hindu system of law is no doubt a complicated structure, the various parts of which are interconnected with and run into each other at every stage. Still one can agree with the Committee that neither regional or other differences nor constitutional difficulties should present insuperable obstacles in this respect. A common code of laws is as much essential to Hindu unity and homogeneity as a common language or common culture. It is eminently desirable to achieve uniformity in law wherever possible and tolerate divergences wherever inevitable. The Committee have in this connection issued four Memoranda containing a general survey of the Hindu law of succession and embodying their proposals—of an exploratory character only—for the codification of that branch of the law. The proposals are generally such as will command fairly wide acceptance.

Memorandum I deals with the Mitakshara law of intestate succession of males to the property of males unmodified by statutes. The rules are expected to yield results "sufficiently accurate for all practical purposes" and be "exhaustive in the sense that they furnish a decisive test in every imaginable case." It is claimed that they involve "no change in the traditional Mitakshara law of male succession" and are merely "restating the old principles in a more precise form."

Memorandum II deals with the succession of female heirs to the property of a male in the Mitakshara school. It is declared that the laws of succession should be "in aid of our ideals of marriage," for "a lofty ideal of marriage ill-consorts with a low standard of property rights." For this purpose according to the Committee it is the ideas of Jaimini rather than those of

Baudhayana that should form the basis. Accordingly the Committee have suggested that no woman shall be disqualified for succession merely by reason of her sex. Nor is any limitation to be imported into the nature of the estate merely because it is held by a woman. Radical though these principles appear at first sight, they have to be taken in the light of the statement in Memorandum IV that on the death of the female heir, the inherited property shall devolve on the heirs of the last male owner of such property. The heirs other than widow, mother and daughter enumerated in the Mitakshara and the Mayukha as well as those coming in by virtue of special legislation like Act II of 1929 and Act XVIII of 1937 are to be accommodated. One special rule is made for women who are widows when succession opens, namely, that they shall take in the places which their husbands would have occupied had they been alive at that time. Also to remove any injustice occasioned to the daughter by the passing of the Deshmukh Act, the unmarried daughter is to find a place in the "simultaneous succession" group of heirs.

Memorandum III deals with intestate succession under the Dayabhaga law and Memorandum IV deals with succession to *stridhana* property.

Review of the proposals relating to the Mitakshara law of succession to males.[1] The rules set out at the end of Memorandum II constitute the rules which the Committee would recommend

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[1]According to the Committee the whole law of Mitakshara succession to the property of males can be put in the form of the following rules:—

"*Rule* 1. When a Hindu male governed by the Mitakshara school dies intestate in respect of heritable property, it shall devolve in the following order on the following classes of relations, namely:—

I The "enumerated heirs", that is to say,

1. (*a*) Widow.
   (*b*) Son.
   (*c*) Son of pre-deceased son.
   (*d*) Son of pre-deceased son's pre-deceased son.
   (*e*) Widows of (*b*), (*c*), and (*d*).
   (*f*) Unmarried daughter (all succeeding simultaneously and with equal rights).
2. Married daughter.
3. Daughter's son.
4. Mother.
5. Father.
6. Brother.
7. Brother's son.
8. Father's mother.
9. Sister.
10. Father's father.
11. Son's daughter.
12. Daughter's daughter.

for adoption in case the Mitakshara law of succession is for any reason to be separately codified. The rules given are simple. In some cases they have departed radically from the existing law. Blood-relationship as measured by line and degree seems to be the main principle on which the rules are founded.

The Committee's suggestion that no woman shall be disqualified for purposes of succession by reason of sex, means that every female relation who stands in the same degree of kinship to the deceased as a male heir will be entitled to rights of heirship. Also, except in the case of the "enumerated heirs," a male and a female heir standing in the same degree of kinship to the deceased will share equally. Thus where the surviving relations are paternal uncle's son and paternal uncle's daughter, the latter will be an agnate according to the Explanation at the end of Rule 1 and both being heirs in the same degree will take equally. These principles mark a considerable departure from the existing law but should be welcome in so far as they enable all blood relations of the deceased irrespective of sex or degree to take before the property of a person can pass by escheat.

The principle that outside the circle of "enumerated heirs" each class will exclude the next means that agnates of the deceased, however remote, will exclude the cognates of the deceased,

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13. Sister's son.

II. *Agnates of the deceased* (*i.e.*, persons related to him wholly through males) other than those already enumerated under I.

III. *Cognates of the deceased* (*i.e.*, persons related to him, but not wholly through males) other than those already enumerated under I.

Explanation:—A woman who is related to the deceased wholly through males (excluding herself) is an agnate and any other female relation a cognate for the purposes of these rules.

Rule 2. (*a*) Each class excludes the next and within each class the earlier group excludes the later.

(*b*) In each group, persons related to the deceased by the half-blood succeed immediately after persons related by the full blood.

Rule 3. The order of the heirs in classes II and III shall be determined by the next four rules.

Rule 4. Of two heirs, the one who is nearer in ascent succeeds first.

Rule 5. If the two are equally near in ascent, the one nearer in descent succeeds first.

Rule 6. If the two are equally near both in ascent and descent, the one who is in the male line of ascent succeeds first.

Rule 7. If the two are equally near in ascent and descent and the chain of ascent, if any, is the same in both cases, the one who is in the male line of descent succeeds first.

Rule 8. A woman who is a widow when succession opens (except the widow of the deceased himself) takes the place which her husband would have occupied in the order of succession if he had been alive at the time, without prejudice to any other rights which she may have."

however near. Thus a son's daughter's son will have to yield place to the great great grandfather's great great grandson. No doubt this is also the present position. But as has been pointed out in *Kalimuthu* v. *Ammamuthu*,[1] persons like the son's daughter's son, daughter's daughter's son and daughter's son's son deserve to be given higher places in the line of succession. Either the category of "enumerated heirs" will have to be enlarged so as to admit such persons, or the rule that agnates shall exclude cognates should be made to govern only as among descendants in the same line.

The son retains his place of primacy as heir, but his share gets further attenuated. He is to share equally not only with the widow of the deceased and the widow of a predeceased son etc., but also with the unmarried daughter. This makes little allowance for the round of spiritual duties cast upon a son by the principles of Hindu religion which gave him his place of primacy. There is no prescription in the Memorandum concerning the adopted son and the special rules relating to his share. Nor is there any, in regard to the anulomaja son in places where such marriages are valid. Again what is the position of a *dasi putra*? Is it the intention of the Committee to deal with these matters when the other branches of Hindu law like marriage, adoption etc., are dealt with? The exclusion of the illegitimate son from succession, if intended, will be in accordance with the present day Hindu public sentiment and will remove a needless distinction in law resting upon difference in caste.

The widow and other female heirs are given absolute estates in inherited property subject however to such property devolving on their death on the heirs of the last male owner. The change is radical and in view of the automatic cutting down of the son's share entailed by the provision for equal rights both for the unmarried daughter and the heirs introduced or benefited by the Deshmukh Act, it may evoke opposition. It will be better if provision is made for a larger share to the son. It should also at any rate be made clear that where there is more than one widow left by the deceased they will only cumulatively take the share of a son.

The unmarried daughter is equated with a son. One ought not to object to the daughter receiving a share. Equal share for her with the son is, however, more than what even the Muslim law allows. To give her half the share of a son may placate opposition. It will facilitate her admission into the group of heirs taking by simultaneous succession. In fact it might very well be made a rule of law that as among heirs standing in the same degree of kinship to the deceased the sharing of the inheritance shall or-

1. (1934) I.L.R. 58 Mad. 238.

dinarily be in the ratio of 2: 1 male to female. Again why leave the married daughter out of the "simultaneous succession" group of heirs? Is it because the unmarried daughter's share is in lieu of her right to maintenance and marriage expenses? A widowed and destitute daughter would certainly require protection from her father's family. So why not admit her into the circle of heirs taking by "simultaneous succession"? It will also be better if the theoretical rule of preference among married daughters according to their relative affluence or indigence is abolished.

The 8th Rule, if strictly applied, would result in the step-mother, brother's widow and brother's son's widow superseding father's mother, father's father, son's daughter and daughter's daughter etc., as it is not stated that the operation of the rule is to start only after the exhaustion of the "enumerated heirs." To strictly apply the Rule will be to ignore the principles of natural love and affection, for the sake of logic. It is essential that the 8th Rule should be made to operate only after the class I heirs are exhausted.

Sister is preferred to son's daughter etc. The preference will not find acceptance. It is in Bombay that it has been held that in spite of the Act II of 1929 casting the preference the other way the sister would still retain her place of primacy as one accorded by *custom* to her in that presidency. If a son or daughter is preferable to the father as heir, consistently, the son's daughter and the daughter's daughter should have priority over the father's daughter. The dictates of natural love and affection also point to that result.

Rule 3 read with Rules 4 & 5 prescribes the order of succession among agnates. The distinction between gotraja sapindas and samanodakas is eliminated and the latter may sometimes defeat the former. Such cases, however, will be rare. Also when once the circle of relations bound by ties of love and affection is passed, it matters little which of two heirs, who relatively speaking are not close to the deceased, succeeds. There can thus be little objection to the adoption of the rules of agnatic succession as suggested by the Committee.

Cognatic succession is rescued from uncertainty and indefiniteness. The guidance afforded by the Mitakshara was slender. The rules deduced were often arbitrary and in their application produced conflict of judicial opinion. The rules proposed by the Committee are therefore to be wholly welcomed in this respect.

The 8th Rule, by which a woman who is a widow when succession opens takes the place which her husband would have occupied in the line of heirs had he been alive at the time, must have its operation started only after the exhaustion of the "enu-

merated heirs". Also the meaning of the expression "takes the place" should be made clear. Does it purport to import the theory of representation for all purposes or substitution in a restricted degree only?

The rules of exclusion from inheritance will have to be indicated. The position of disqualified heirs and the effect of the subsequent removal of the disqualification will have to be defined. What will be the status and rights of children born of a widow remarriage in regard to property left by the children of the first marriage will have to be stated. The rule governing succession by preceptor, pupil, fellow student etc., which is still current may well be abolished. How succession to impartible estates should be regulated as among heirs of the "simultaneous succession" group or as between heirs in the same degree of relationship but belonging to different sexes, should also be specified.

Proposals as regards the Dayabhaga School reviewed[1]. The Committee's proposals are founded on an acceptance of Sarkar Sastri's exposition of Jimutavahana's theory in preference to the application of the spiritual capacity principle as worked out by Dr. Sarvadicari. The rules as stated by the Committee are to be welcomed inasmuch as their adoption will cause the least divergence between the Mitakshara and the Dayabhaga schools.

Proposed Rules for All India examined[2]. The scheme is admittedly a compromise between the Mitakshara and the Daya-

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[1]The Dayabhaga rules as suggested by the Committee are:—

"*Rule* 1. When a Hindu male governed by the Dayabhaga school dies intestate, his property shall devolve in the following order on the following classes of relations, namely:—

I. The enumerated heirs" that is to say,

(*a*) (1) Widow, (2) son, (3) son of predeceased son,

(4) Son of predeceased son's predeceased son,

(5) Widows of (2), (3) and (4).

(6) Unmarried daughter (all succeeding simultaneously and with equal rights),

(7) Married daughter, (8) daughter's son.

(*b*) F, M, FS, FSS, FSSS, SD, DD, FD, FDS;

(*c*) FF, FM, FFS, FFSS, FFSSS, FFDS;

(*d*) FFF, FFM, FFFS, FFFSS, FFFSSS, FFFDS;

(*e*) MF, MFS, MFSS, MFSSS, MFDS."

Classes II and III of Rule 1 and the other Rules, are the same as in the Mitakshara school.

[2] The following rules are proposed for the whole of India:—

"*Rule* 1. When a Hindu dies intestate in respect of heritable property, it shall devolve in the following order on the following classes of relations, namely,

I. The "enumerated heirs", that is to say.

(*a*) *The intestate's widow and descendants*;

bhaga schools. The suggestions made in regard to the proposals concerning the Mitakshara law, such as the award of the larger share to the son, the promulgation of a rule that ordinarily two-co-heirs if of opposite sexes should share the inheritance in the ratio of 2 : 1 male to female, the inclusion of the destitute widowed daughter within the circle of heirs taking by simultaneous succession, the starting of the operation of Rule 8 only after the enumerated heirs are exhausted, the enlargement of the circle of enumerated heirs by admission thereto of the son's daughter's son, daughter's son's son, daughter's daughter's son etc., the abolition of the share allotted to illegitimate sons among Sudras, the definition of the position of the adopted son and the anulomaja son, the clarification of the position of disqualified heirs, the enunciation of the rules of exclusion from succession etc., will *mutatis mutandis* hold good in regard to the proposals for All India. The inclusion of the maternal grandfather and his descendants among the enumerated heirs is a move in the right direction particularly in

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(1) Widow
(2) Son
(3) Son of predeceased son
(4) Son of predeceased son of predeceased son.
(5) Unmarried daughter
} (all succeeding simultaneously and with equal rights).

(6) Married daughter.
(7) Daughter's son.
(8) Son's daughter.
(9) Daughter's daughter.

(*b*) *The intestate's father and his descendants*:
(1) F (2) FS (3) FSS (4) FSSS (5) FD (6) FDS.

(*c*) *The intestate's father's father and his descendants*:
(1) FF (2) FFS (3) FFSS (4) FFSSS (5) FFDS.

(*d*) *The intestate's father's father's father and his descendants*:
(1) FFF (2) FFFS (3) FFFSS (4) FFFSSS (5) FFFDS.

(*e*) *The intestate's mother's father and his descendants*:
(1) MF (2) MFS (3) MFSS (4) MFSSS (5) MFDS.

[SD and DD are the intestate's own descendants and therefore belong logically to I (a).

It is unnecessary to mention the son's widow or the grandson's widow or the great grandson's widow, or M or FM or FFM separately, because by virtue of Rule 8, if widows, when succession opens they take the place of their respective husbands]

II. *Agnates of the deceased* (*i e*., persons related to him wholly through males) other than those already enumerated under I.

III. *Cognates of the deceased* (*i.e.*, persons related to him, but not wholly through males) other than those already enumerated under I.

Explanation:—A woman who is related to the deceased wholly through males, (excluding herself) is an agnate and any other female relation a cognate for the purposes of these Rules."

Rules 2 to 8 are the same as the Rules 2 to 8 proposed in the case of succession in the Mitakshara school,

view of the intimate attachment that in actual life one often finds subsisting between a person and the members of his maternal grandfather's family. Even if this group of persons had been placed immediately after the paternal grandfather and his descendants there may not be much objection to such a step. The enumeration as made avoids the criticism of remote sapindas and samanodakas being preferred by a strict application of the rule of blood-relationship as measured by line and degree to persons who will be nearer from the point of view of natural love and affection or spiritual benefit.

Examination of the proposed rules of stridhana succession.[1] The proposals relating to stridhana succession adopt Vignaneswara's definition of stridhana, that it conforms in its import with its etymology and is not technical. At the same time it is recognised that a distinction should be made between property inherited from a male owner and other types of stridhana for purposes of devolution. The elimination of all other distinctions for purposes of devolution, whether founded on the status of the woman or on the mode of acquisition of property or on the form in which she was married, is a most laudable step and makes the law simple and easily intelligible. The suggestion that the Rules of succession proposed in regard to the Mitakshara school may also be adopted in the Dayabhaga school is a reform very much to be desired.

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[1]The following rules are proposed for the Mitakshara jurisdictions:—

" 1. If a Hindu woman dies intestate in respect of *stridhana*, it shall devolve according to the following rules.

2. That part, if any, of the *stridhana* which was inherited by her from a male owner shall devolve upon his heirs in the order in which they would have succeeded to his property.

3. Save as aforesaid, *stridhana* shall devolve upon the following relations of the intestate in the following order:—

(*a*) Unmarried daughter;
(*b*) Married daughter;
(*c*) Daughter's daughter;
(*d*) Daughter's son;
(*e*) Son;
(*f*) Son's son;
(*g*) Husband;
(*h*) husband's heirs in the order in which they would have succeeded to his property;
(*i*) Mother;
(*j*) Father;
(*k*) Father's heirs in the order in which they would have succeeded to his property;
(*l*) Mother's heirs in the order in which they would have succeeded to her *stridhana*;
(*m*) Daughter's husband."

PRISON REFORM*

BY

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III—Penological Problems.

Penological problems may be analysed as follows: (*i*) Conception of punishment. (*ii*) Punishment in special cases. (*iii*) Forms of punishment. (*iv*) Alternative punishment. (*v*) Indian penal reform.

(*i*) *Conception of punishment:*

(*a*) *Inevitability of punishment.* The idea that no offence should go unpunished has persisted from the beginning of history and still dominates criminological thought and practice. The main sources of such a conception are:—the revenge theory of punishment, political retaliation, safety of the state, vindication of the majesty of law and authority, analogy of the law of causation, theological notions of punishment expiating the sin of the offence or exorcising the influence of the devil, the need for impartiality of criminal administration, Kant's theory that the law of punishment is a categorical imperative (according to which punishment is an end in itself), the theory that punishment must be in proportion to the injury inflicted by the offence or in proportion to the gratification to the injured as redress, and the theory that certainty of punishment operates as deterrence of crime.

Of these reasons only three—safety of the state, impartiality of justice and deterrence—possess some real validity. But these reasons are not absolute and must admit of numerous exceptions and limitations. Welfare of the citizen and respect for his liberty must be as important as, if not more important than, the safety of the state. Unless the state belongs to all equally and wholly, safety of the state would amount to no more than the safety of the governing interests, very often at the expense of the majority of citizens. A modern state cannot remain a mere police state; it must civilise and educate its citizens. A strong will is especially necessary for criminals to resist crime, but severe punishment defeats itself by killing their will power. The safety of a state ultimately depends upon the efficiency and the love of liberty of its citizens and their willing co-operation. Repression will destroy all these factors. The right to pardon and to revise sentences exists in all legal systems and now requires to be systematised and extended. Considerations of impartiality of justice should in practice result in the decrease rather than the increase of prosecutions. The act of prosecution cannot but be subject to the discretion of the Executive. The Executive of any State may in practice use

* Continued from p. 26, (1941) II M L.J. (Journal section).

this discretion ruthlessly against its opponents but be unwilling to prosecute its own partizans and supporters. A Nazi ministry will not last for one moment if it prosecutes Nazi culprits with the same thoroughness as it prosecutes others. To expect increase of Nazi prosecutions for the sake of impartiality is to expect the impossible. The only practical alternative is that impartiality should be shown in letting off non-Nazis also to the same extent as the Nazis.

Deterrence by fear of punishment is morally undesirable as already explained. Practically it is not a success. This fear has not diminished either the quantity or the quality of crime in any country. This fear can easily be overwhelmed by excitement, passion, mental defects, ideological fads, environmental necessities, suggestion etc. The doctrine of obsolescence of laws advocates that there should be no prosecution for contraventions of old laws which have become obsolete. In every age the Courts themselves declare certain laws as being obsolete. In India, Smriti texts have declared that entire codes are to be treated as obsolete in succeeding *yugas* and that *achara* can repeal a text.

(*b*) *Legal punishment*: Legal punishment is what is inflicted or allowed to be inflicted by law. Non-legal punishment is what is inflicted by religion, morality, conscience, family, caste, society, institutions (such as the schools, clubs, Trade Unions etc.,) and employers. Legal punishment is primarily physical and external. Non-legal punishment may be both mental and physical. Non-legal punishment is wider than legal punishment in its scope, extent, variety and effect. Dosteviesky's masterpiece "Crime and Punishment" illustrates that non-legal punishment is far more terrible and unbearable than legal punishment. Fear of the displeasure of the *guru* or the husband, the silent tears of a mother, the threat of disinheritance and non-protection by a father, the threat of dismissal by an employer, the threat of *dharma* and similar methods, the threat of excommunication or boycott—these inflict far more terrible punishment than the state could ever hope to do. This is one of the reasons why the power to inflict non-legal punishment on the part of ecclesiastical authorities, parents, husbands, guardians, teachers, employers, social bodies and institutions has been continuously curtailed by law. But the state itself was employing all the forms of non-legal punishment when it was using torture either for discovery or as punishment. The authorities that impose legal punishment are: (*a*) Criminal Courts (*b*) Civil Courts. The latter impose punishment, (*i*) for contempt of Court, or by way of (*ii*) disciplinary action under the Legal Practitioners Acts (unless vested in Bar Councils), or as (*iii*) civil imprisonment for debts or under S. 74, Civil Procedure

Code. (*c*) Revenue Department, awarding punishment in regard to revenue offences. (*d*) Legislative Houses awarding punishment for contempt of its authority or privileges and rules. The aim of legal punishment is four fold: (*a*) protective *i.e.*, protection of the state and the society from the activities of the criminal. (*b*) retributive *i.e.*, revenge for the injury done. (*c*) deterrent or preventive *i.e.*, to prevent the criminal from repeating the crime and the public from resorting to it, and (*d*) reformatory *i.e.*, to reform the criminal. The comparative value of these aims forms the subject matter of the several theories of punishment.

(*c*) *Theories of punishment*: There are three notable theories of punishment—the retributive, the deterrent and the reformatory theories. It may be taken that the first theory is wholly discredited now and the second is yielding place to the third. The aspiration of modern criminology is to retain the psychopathic, sociological and the retributive methods of treatment only and to abolish *in toto* the penological method of treating even real and true criminals. It is now agreed that penological treatment should be totally abolished for pseudo-criminals and nominal criminals subject to two exceptions: (*a*) their crime may be treated as a tort and the injured may be awarded compensation according to the ability of the criminal, and (*b*) detention may be enforced against nominal criminals in order to protect the community from their harmful acts. Beyond monetary compensation and detention there should be no other form of penological treatment accorded to these classes of criminals. Punishment that is now retained must be deemed to be a measure of social defence and should aim at reforming the character of the criminal. The implications and characteristics of reformatory punishment may be summed up: (*a*) Criminals are normal men and crime is a normal activity which must be treated normally; (*b*) Anti-sociality is relative to time and place and fluctuating opinion upon which none should be damned for ever or irretrievably; (*c*) Criminality is not a fixed mental trait nor a fixed objective standard, and is largely the result of heredity and environment; (*d*) Crime and punishment are purely secular matters; (*e*) It is the criminal, a personality, that should be treated and not objective crime; (*f*) Treatment must fit the criminal and not the crime; (*g*) Legal punishment is not inevitable and must be gradually eliminated altogether; (*h*) The criminal should be treated as a mental case and controlled by creating in him a sense of self-control; (*i*) Great prominence should be given to the task of reforming his environment, and (*j*) the aim of treatment should be to reform the character for the future rather than to wreak revenge for the past.

(*d*) *Punishment fitting the crime.* Originally this theory was the embodiment of the old law of retribution of an eye for an eye. In modern times Kant and Bentham have given it a new orientation. Kant advocated the theory of equality of suffering. He held that punishment is a categorical imperative, an end in itself, and must correspond in quantity to the suffering of the injured. The pain of the punishment must equal the pain of the injury. Hence punishment must fit the crime. For murder death is the only punishment. This theory is however quite untenable. It is theological in its implications rather than secular. It perpetuates the savage law of retribution. It seeks to save capital and corporal punishment against the enlightened opinion of the world. Further the standard for measuring suffering or punishment is not determinable. The suffering in body and mind cannot be measured. The suffering in reputation can neither be measured nor visited upon the culprit in the same measure. The pain of suffering in property is also incalculable. The loss of Rs. 100 to one man may mean much more than the loss of Rs. 1,000 to another. The proportion varies almost to infinity. Are we to attach a staff of economic and statistical experts to Courts to assist in determining this scale of proportion? They can work upon materials which another army of officers have gathered after an exhaustive study of the life conditions of both parties. This task may take months if not years. Till then no punishment can be inflicted. If the culprit is poorer than the victim proportionate punishment cannot be imposed upon him. The general consequences of a crime may involve incalculable damage. The swindles of a financier may ruin millions and cause greater suffering than dozens of murders. But Kant dare not prescribe death to the financier. If moral guilt of the offender rather than the damage done to the body, mind, reputation and property of the injured is the criterion of measuring the suffering that a crime must produce, the quantum would become arbitrary and speculative, further, even a wish or an attempt at crime would involve moral guilt and will have to be punished. Kant's theory is also unworkable in practice: (*i*) Murder and death penalty can never resemble each other. The circumstances of murder vary infinitely and cannot correspond to those under which the murderer is executed. (*ii*) Imprisonment does not correspond to any crime. A period of imprisonment bears no likeness to theft or forgery. (*iii*) Transportation also does not correspond to any offence in suffering. So is fine imposed for technical offences. (*iv*) Even for the same offence in no penal system is the same punishment imposed for juveniles, habituals, aged men, or first offenders. (*v*) Suffering by imprisonment varies according to the status, condition and

temperament of the prisoner. A high class man suffers more than a low class offender, and a first offender more than a habitual. (*vi*) No law can codify a table of scales of punishment and must leave the quantum to judicial discretion. (*vii*) Greater punishment is now inflicted on certain classes of offences like those against the state or against property. Habituals for the same offence receive greater punishment.

Bentham advocated the theory of equality of gratification: "Inflict the proper punishment and let the injured party derive from it such a degree of satisfaction as comports with his situation and of which his nature is susceptible". But punishment can never be in proportion to gratification to the injured. This theory is even more untenable than that of Kant. To encourage the injured to view punishment as gratification will produce moral depravity.

(*e*) *Revision of sentences*: Revision of sentences is opposed by many on several grounds: on the theory of revenge, on the theory of punishment fitting to crime, on the score that the majesty of law and judicial administration should not become impaired, that revision leads to jobbery, back-door influences, partiality and corruption, that political influences may operate and render criminal justice a farce, that if the convict hopes for and expects a revision, punishment would cease to operate upon him as a deterrent or reformatory process and would upset all sense of discipline, that the rich and powerful and influential criminals would monopolise all the advantages of the privilege of revision, and that when legal experts like Judges aided by lawyers have determined a sentence revision by a less expert body on the basis of the same material but without the aid of a discussion or representation by lawyers is not going to achieve anything better.

But revision has to be adopted for various reasons: (1) considerations of revenge or prestige should not stand in the way of revision; (2) the liberty of a citizen being at stake the justification for its loss requires continuous examination; (3) instead of sacrificing revision it should be organised like the judiciary to proceed with independence and impartiality, (4) the examination of the sentences by another body freed from the rigidity of judicial procedure and the cramping atmosphere of the Courts and the pedantry of lawyers would involve a different outlook and would prove socially beneficial; (5) convictions based upon a technical interpretation of law or fact, upon undetected imperfections in the legal code, upon legal pedantries and sophistries divorced from life, upon obsolete fictions and precedents, and upon grounds of a controversial nature do require immediate revision; (6) often convictions may have been unconsciously influenced

by political or religious bias and if counteracting political and religious influences affect their revision the result would not be harmful; (7) apart from these considerations the need for revision requires to be examined from time to time in the light of changing circumstances; (8) all Governments have retained the power of releasing prisoners or remitting sentences and hence it is desirable to have this function scientifically organised, and (9) hope or expectation of revision cannot demoralise discipline. Such hope is a legitimate right and cannot be dubbed as an evil factor. All convicts cannot come to entertain such hopes except those who feel they were unjustly convicted and who are sure of friendly help. Denial of hope in either case would be a demoralising factor. A prisoner who hopes for a release would not risk it by bad behaviour. Hope of remission is perhaps the best promoter of discipline of the best type.

Revision to be effective must be systematic and universal. It must be applied to all classes of sentences. Revision Boards must sit continuously and permanently. The Boards attached to jails would be Remission Boards and not Revision Boards. A Revision Board consisting of not less than 3 and not more than 5 persons the majority of whom are lawyers of not less than 10 years' practice elected periodically by the local law associations may be attached to each of the criminal Courts in the State. The Courts must send a calendar return of their cases after final disposal to these Boards. To enable the Boards to revise sentences such as fines, whipping, very short term imprisonment etc., which will be executed without delay, it may be provided that the Boards should have power to request Courts to stay the execution of the sentences upon the application of parties and the Courts also should upon the application of the parties do so and grant time for parties to move the Boards to request for stay. Service on the Boards must be purely honorary. For the present the opinion of the Boards may be made recommendatory, the Government alone revising the sentences; but so long as capital sentence is retained, the recommendation of the Board attached to the High Court for transmutation of such a sentence must be accepted by the Government and carried out. The Revision Board must be able to consult any body of experts on any matter it considers necessary.

It is extremely desirable that non-official agencies or specialist bodies like Bar Councils, Law Associations, Medical Bodies, Criminological Institutes, Psychological Institutes, Medical and Psychological Faculties of the University, Prisoners Aid Societies, philanthropic bodies, *etc.*, should interest themselves and try to assist the Revision Boards.

In many countries the Probation Officers or other bodies dealing with juvenile criminals have the right to request the juvenile Courts to modify the sentences. That may be adopted here also even for adults.

(*f*) *Aid and after-care*: Owing to the abnormal atmosphere surrounding everything relating to criminals and the nature of the punishment inflicted upon them the majority of them become wrecked morally and economically and cannot stand on their own legs without organised and effective aid.

In advanced countries numerous types of well organised Prisoners Aid Societies have come into being. It would be extremely desirable that these should be largely honorary and non-official but the Government cannot neglect to enter the field especially in a country like India. Government on its part should try to remove every sort of restriction imposed upon convicted persons on old fashioned ideas. I would advocate a system of doles to all helpless persons. Government must liberally help Aid Societies with funds. Part at least of the prisoners' gratuities and earnings should be utilised for this purpose. If any scheme of national insurance or old age pension is created, convicted persons should not labour under any disability. The Aid organisations must cater to the juveniles, women, the aged, the disabled (physically or mentally) and the labouring classes by different methods through different sectional or independent organisations. All these organisations should be amalgamated into a national organisation with a central body at the top to co-ordinate the work. Learned bodies like Criminological Institutes or University bodies must render help and advise these Aid Societies.

In several countries the Governments have created official guardians, Parol Officers, Probation Officers, Public Assistance Authorities etc., to take care of juveniles or insane persons. Such organisations require to be extended to other classes of convicts also.

(*ii*) *Punishment in special cases.*

(*A*) *Juveniles and adolescents*: Special treatment for juvenile and adolescent delinquents has been elaborately developed during the last 30 years in all progressive countries. Special laws, special Courts, special buildings, special institutions and special administrative organisations have been built up in most of the countries. Most countries have special Children Acts. England had a Children Act in 1908 and has now a Children and Young Persons Act in 1933. Recently in 1937 France passed a Children's Code by codifying all laws, decrees, circulars, regulations and rules regarding children.

Minors are now divided into children and adolescents. Minors under 14 are children except in India (12 years), France (13), Sweden (15), and Chile (16). The next class is often subdivided and called differently. It is called minors in Germany, India, Japan, Sweden etc. England calls these "young persons." India divides them into youthful offenders (12 to 15) and young adult offenders (15 to 18). The Irish Free State divides them into "young persons" (14 to 16) and "young offenders" (16 to 21).

Law also prescribes ages for non-culpability and for conditional culpability. The age for absolute non-culpability ranges from 7 (S. Africa, U.S.A., India etc.) to 16 (Chile) under which age no child will be culpable for any crime. England has 8, France 13, Ireland, Italy and Japan 14 and Sweden 15. The age for conditional culpability ranges from 7 (S. Africa etc.) to 20 (Chile). During this age the child will be culpable on condition that real criminal responsibility is proved. India holds in the case of children from 7 to 10 that they commit no crime if they are not mature enough to understand. The U.S.A. holds that children under 7 to 14 are presumed to be *prima facie* incapable of crime while children under 14 to 18 are presumed to be *prima facie* capable of crime. South Africa also presumes children under 7 to 14 to be incapable of crime.

Most of the countries have now special juvenile Courts which work under special procedures. These Courts are more concerned with the investigation into the motives and conditions that caused a juvenile to commit the crime as well as with the modes of providing for reformatory treatment than with the proof of his crime and its punishment. In my opinion women should be preferred to men as Judges of these Courts. Certain institutions and officers technically called Auxiliary Services of the Juvenile Courts assist these Courts in investigation, medical and mental examination, supervision, detention, and probation. They investigate the mental and environmental conditions of the juvenile delinquent as well as the circumstances under which the crime was committed, and guide the Juvenile Court in deciding about the treatment to be accorded to him.

According to modern view juvenile and adolescent delinquents should not be punished or sent to prisons but should be placed in special Reformatory Institutions. Mexico has abolished prisons for minors. Some countries send them to prisons only in the last resort. Some countries have reformatory prisons as distinguished from reformatory schools (*e.g.*, Victoria in Australia). The names of a few of these characteristic Institutions may be mentioned:

(*a*) Reformatories:—(i) Reformatory schools, (ii) Reformatory prisons (Victoria), (iii) Reformatory colonies (Estonia), (*b*) Industrial Schools (U.S.A.), (*c*) Farm houses (N.S. Wales), (*d*) Central prison for minors (Greece), (*e*) Medical Establishments (Mexico), (*f*) Moral Assistance Institutions (Italy), (*g*) Homes and Hostels, (*h*) Guardians, (*i*) Borstals (England), (*j*) Institutions for abnormals, (*k*) Public Assistance Authorities, (*l*) Charitable Institutions, and (*m*) Probation Officers. As a rule separate institutions exist for boys and girls. In some institutions they remain mixed up to a certain stage. Vocational and moral education receive great prominence.

The second International Child Welfare Congress at Brussels in 1921 recommended, (*a*) prolonged psychic observation of juveniles to discover their undetected abnormalities and anomalies, and (*b*) provision of graduated regimes for educating children from social perversity to amenability.

According to the International Penitentiary Congress held at Washington in 1910 the duties of Probation Officers are:—(*a*) Detailed investigation about juvenile offenders and submission of the results to Juvenile Courts before decision. (*b*) Escorting juveniles to the Reformatory Institutions to which they are sent by the Court. (*c*) Acting as guardian *ad litem* in adoption cases. (*d*) Undertaking the supervision of a child who may be placed by the Court on probation. The Probation Officers may be (*a*) Public Officers paid by Government (*e.g.* England), (*b*) Paid Officers to whom are attached unpaid volunteers or members of child welfare organisations (Spain Portugal, Bengal, Victoria, etc.), (*c*) Non-officials who co-operate (*e.g.*, France, Belgium, Poland). These officers are appointed by the Juvenile Court (Belgium, Poland, Spain) or by the Government (London, Bengal, S. Africa, etc.), or by the Probation Committee (England except London).

(*B*) *Civil Prisoners*: While in many countries imprisonment for debts is being abolished India is still reluctant to give it up. Its abolition will stop the alleged exploitation of the poor. It will also be a great public gain as it will reduce prison establishment and save the time of civil Courts. It may be true that civil imprisonment enables the realisation of decree debts to some extent. But this result may increase tenfold if the debtor is allowed to be beaten or tortured. Penal coercion should however be confined to crime only. According to the new outlook it is to be abolished even for crime. Indebtedness is not a crime, and it would be the height of barbarity to apply in this age penal coercion to debtors.

(*C*) *First Offenders*: Barring one or two in a thousand the first offence would be an accidental or chance offence. If the

offenders are barbarously punished and sent to prisons a large number of them are sure to develop into recidivists and habituals. This has led many countries to let them off on probation or to punish very leniently and to keep them separate from the habituals. This leniency is opposed to all the old theories of criminology and can only be justified by its new ideas. According to the theory of free-will the first offender will have to be punished more than the habitual since the will of the first offender is freer to resist crime than the will of the habitual which is dominated by criminality hardening into a habit. According to Kant's theory of equality of suffering, the first offender must not suffer more than the habitual and the latter cannot be punished more than the former. According to the retributive theory punishment for both cannot vary. S. 562, Cr. P. Code, must be extended practically to all offences and to all persons. The system of demanding security must be abolished as it serves no useful purpose and destroys the man's self-respect.

(*D*) *Recidivism of habituals*: Recidivists are usually classed as Intermediates and Habituals. There are no natural or universal tests to differentiate the two. The distinction based upon the number of previous convictions is an artificial and arbitrary test. The Prevention of Crimes Act of 1908 in England ruled that if a person with a number of previous convictions comes before the Court for a fresh offence, say housebreaking, and if the Judge holds him to be a habitual he shall sentence him to penal servitude for the fresh offence and also to five to ten years of preventive detention after completing the former sentence. A new preventive detention prison has been built where these are detained for a number of years without the full rigours of the prison discipline. The object of this is merely protective—to protect society from their depredations. A wild suggestion has sometimes been made that incorrigibles should be marooned in some Pacific islands and left to shift for themselves. But modern psychology and the New Education Science refuse to admit that any person can be held to be incorrigible or incapable of reform. A habitual cannot be legally defined at all. It depends upon mere practical impressions and ethico-theological notions. It is often said that a person whose character has become perverted, who is lost to all sense of shame, who has no sense of horror for crime or vice and whose tendency ever runs towards crime must be a habitual or an incorrigible criminal. This is merely the echo of the old theory of moral insanity with a vengeance. This theory of moral insanity dates from the 17th century. A human personality is conceived to consist of intellect, will and emotions. Morality is moral sentiment and is based on man's emotional nature only according to Locke

and the philosophers of the 17th century. Character is moral sense—moral emotional nature. Insanity implies the disorder of the human personality as a whole—of will, intellect and emotion. Moral insanity implies degeneration or disorder of character, of moral sense, of emotional nature only without the impairing of the intellect and the will. A morally insane person possesses intellect to understand what he does and will to restrain his action but is devoid of moral sentiments and his anti-social acts would be remorseless. Remorselessness is held to be the test of such moral insanity. As the will and intellect remain unimpaired the person is quite sane for purposes of punishment. Such a morally insane person would be a habitual and incorrigible criminal. The Italian School of Criminology blessed this theory by suggesting a cause for moral insanity, namely, atavism. This theory of moral insanity is fallacious. The division of mind into three water-tight compartments as will, intellect and emotion is untenable. They are merely inter-dependent aspects or modes of mental manifestation. If the intellect or emotion is affected it only means the mind as a whole is affected and all its three aspects will be equally affected. This theory ignores the workings of the unconscious mind on the conduct of man. If degeneracy produces moral insanity, intellect and will also must degenerate. A moral imbecile with a sound intellect and a strong will cannot be found. Criminality proceeds not from want of moral sense but from ignorance, weakness of will, bad social environment, excitement of passion, etc. Character is psychological rather than ethical. A man of character is one who displays strength of mind in his action whose ethicality depends upon the character of his motive as well as the character of the effects of his actions upon others. Ethicality is thus not psychological and is extraneous to mind. There is no fixed moral sense or moral faculty in the mind of men. Morality is a matter of ideas and opinions which vary from age to age and country to country. Emotions as such whether primary or derivative are neither moral nor immoral. Love, anger, greed, fear, etc., may prove good or bad according to circumstances. During a patriotic war hatred of the enemy is not condemned as immoral. The psychic bent of man at birth is a moral. It develops under stress of the social environment and becomes habitually pro-social and not anti-social. Its moral character would thus be ethical. It is only under stress of adverse circumstance, or temporary moods and conditions that it would get defeated for limited periods or on isolated occasions. Immorality would thus be abnormal. What has been described as moral insanity by past thinkers is now recognised to be merely some form of mental defect and no more. Lombroso called it a form of latent or attenuated

epilepsy. Parmelee calls it a kind of lunacy or a form of congenital imbecility.

It is thus clear that the so-called Habitual or Incorrigible criminal is very largely mythical like the Economic Man. If he exists at all he is a kind of lunatic or a feeble-minded person. Medical treatment rather than punishment should be provided for him.

(iii) Forms of Punishment.

These may be classified as follows: (*A*) *Insult and Humiliation*: (1) Reprimand, (2) Public Disgrace (*e.g.*, mounting on an ass—Manu VIII. 370) and (3) Branding or face mutilation, etc.

(*B*) *Economic punishment*: (1) Fines, and (2) Forfeiture of property.

(*C*) *Banishment*: (1) Externment from one place to another in the same country, (2) Exile to a desert frontier (Ancient Egypt) (3) Deportation to other countries, (4) Transportation to penal colonies, and (5) Marooning.

(*D*) *Deprivation of civil rights*: (1) Enslavement of the person and his family, (2) Loss of citizenship, (3) Loss of franchise, (4) Loss of profession, (5) Loss of parental rights over children, (6) Loss of free life (*e.g.*, Parol life), and (7) Degradation.

(*E*) *Death*: (1) Modern—some thirty methods of execution, and (2) Ancient—countless methods.

(*F*) *Corporal punishment*: (1) Whipping (by means of cane, rod, cat, birch, bastinado, scourge, etc.), (2) Mutilation, (3) Torture, (4) Penal diet.

(*G*) *Imprisonment.*

Insult and humiliation: Insult as a punishment is primitive, inhuman and inefficacious. All its existing forms may be safely abolished.

Economic punishment: This is really the punishment of the criminal's family. The rich will easily escape and the poor will suffer disproportionately. It would be vindictive in the case of politicals. The levy of fine must be by civil process only. No fine should be collected if the man has suffered imprisonment for it.

Banishment: Transportation to penal colonies is not possible in the face of the growing self-consciousness of those colonies. Public opinion is now condemning this burying alive of these unfortunates. Deportation to foreign countries is now felt to be dangerous as it would enable the deportees to plot from abroad.

Loss of civil rights: Public opinion is coming to condemn deprivation of civil rights. This punishment is akin to enslavement. If the modern world cannot punish by means of slavery and social degradation how can it punish by means of political degradation? It is monstrous to justify the deprival of citizenship, franchise, profession, or free movement on the ground that crime indicates or causes moral degradation. When a convicted person can marry and procreate, own and transfer property, do business, give evidence, attend church or temple, talk or lecture, control and guide his party, write books or articles, how on earth can we say that he is unfit to vote or to practise a learned profession? Even criminal law abhors the view "once a criminal always a criminal". But in the civil sphere it is honoured by holding that a convict if allowed to vote or to practice a profession would cheat and act criminally. This punishment is vindictiveness *par excellence*. Loss of profession is punishment of the family for no fault of theirs and the deprivation of the valuable skill and talent of the convicted person to the community. Loss of parental rights unless necessary for the welfare of the children would be the most inhuman punishment. A life on parole subjects the man to petty police tyrannies and intolerable troubles which has forced many to seek the shelter of prisons.

Death penalty, etc.: Death sentence is a savage survival which modern opinion wants to root out. Modern world has practically given up mutilation and torture. Some still believe in whipping but even they do not defend the cat or the leather whip. Corporal punishment is condemned by the New Discipline system and cannot be retained as before.

Imprisonment: This has now become the residuary punishment.

(*iv*) *Alternative punishments.*

Even if penological treatment should be retained for the true criminal class, modern thought demands a wholesale transformation of the old forms of punishment. Imprisonment has now become a residuary punishment and in the interests of economy and the reformatory ideal certain alternative punishments have been suggested such as the following:—

(*a*) *A—Sexualisation* has been advocated for incorrigibles, sex offenders, congenital criminals, those who are suffering from heritable diseases, etc. The treatment is barbarous and unjustifiable except in the case of the eugenically unfit. This may be beneficial to the race but cannot act as a punishment to any individual.

(*b*) *House detention* is where a person is asked to remain at his own house and is prevented from going out. It is the cheapest form of confinement. It has at least two defects: (1) It may prevent the man from taking any exercise and destroy his health. (2) It may cause hardship to a poor man who is not possessed of sufficient means to feed himself without earning. In jails his food is freely supplied to him. The Government of India pays allowances to all the detenues.

(*c*) *Compensation as in tort according to capacity* has been suggested by way of (1) fines on the rich to compensate the injured, and (2) compensatory labour enforced on the poor who cannot be fined. They should be made to work for the injured and make good the injury.

(*d*) *Extension of fines on the rich according to capacity* has been mooted (1) for awarding compensation to the injured, (2) for meeting the expenses of criminal administration, (3) for creating a compensation fund to compensate the poor accused who are prosecuted and acquitted and (4) for helping the released prisoners.

(*e*) *Indeterminate sentence* is intended to convert imprisonment into a reformatory process. If the prisoner understands that he can get himself released at any time by his good conduct he will strive to reform himself. This should only be applied to the so-called Incorrigibles and Habituals. To apply it to first offenders, chance criminals or juveniles will be a clear misuse of power. In the case of Politicals it is liable to be abused.

(*f*) *Penal commune* like industrial or agricultural self-governing colony for long term prisoners is also advocated. Russia is trying the system extensively. An executive committee elected by the colonists rule the colony. A factory or a farm will be run on scientific lines. The colony will be like a tiny republic. Its members can inter-marry or even get their children or spouses to live with them. They will possess all the equipment of a town. They cannot leave the colony except by permission. If they want to leave the colony they will have to serve their unexpired term of imprisonment in the ordinary prison. After serving their full term in the colony they may be permitted to remain further also. The English Penal Detention camps are also run on somewhat similar lines.

(*g*) *Recruitment to military service*: During war times prisoners have been everywhere employed for military work of all kinds. The same may be done in peace times also. The fit and capable may stick on to military service and its rigid discipline as well as the securing of an employment would certainly cure criminality.

(*h*) *Judicial reprimand*: In the case of first offenders, chance criminals, educated and sensitive criminals a finding of conviction and a warning would often be quite sufficient. The publicity, disgrace, expense, discomfort and anxiety of the trial and conviction are sufficient to deter such persons from relapsing into crime. Several modern codes have adopted it.

(*i*) *Suspension of sentence*: (1) U.S.A.—On promise of good conduct in future no conviction or sentence is passed. (2) England —On conviction the person may be released on probation by taking surety, etc., (S. 562, Criminal Procedure Code, embodies this). (3) Belgium—Conviction and sentence are passed but on promise of good life for a fixed period the sentence will be suspended. If the person commits another crime during such period of probation he will have to undergo the sentences for both the crimes.

(*v*) *Indian penal reform.*

There should be extensive amendments both in the Indian Penal Code and the Criminal Procedure Code.

(*A*) *I. P. C. amendments*: It is impossible to review the Indian Penal Code exhaustively. A few stray suggestions may be made:

(1) Further consolidation of all penal laws within the code.

(2) Omission of certain civil and moral wrongs from the code, *e.g.*, (*a*) Ch. 10, Ss. 182, 185; (*b*) Ch. 11, Ss. 191 to 210; (*c*) Acts of negligence; (*d*) Ch. 16, S. 312 to 314, 317-18; (*e*) Ch. 17, Ss. 415 to 424; (*f*) Ch. 18, Ss. 463-489; (*g*) Ch. 19; (*h*) Ch. 23, S. 511.

(3) Punishments must be revised, *e.g.*, (*a*) abolition of death, transportation, penal servitude and absolute forfeiture of property, and solitary confinement; (*b*) fine must be stipulated to be levied according to the capacity of the offender on proof of the same; (*c*) S. 75—enhanced punishments should be abolished; (*d*) reduction of all the punishments in the code roughly to one-fourth of their present prescription; and (*e*) making fine alternative to imprisonment and not to levy it in addition to imprisonment.

(4) Prescribing a limitation for prosecution.

(5) *Psychological approach*: (*a*) S. 52—The definition of good faith found in the General Clauses Act should be substituted in order to avoid the penalising of negligence. (*b*) There must be limitations of the theory of intention. In the case of the Indian Penal Code, "its authors have throughout been much imbued with the theory that neither the motive nor the result but the intention of the act ought to be the measure of its criminality" (Sir J. Stephen). Greater emphasis on motive is necessary. (*c*)

S. 84 embodies the theory of moral insanity accepted by Courts (*vide* 23 Cal. 604; 29 C.L.J. 209; 53 I.C. 828; 49 M.L.J. 528, etc.). This should be altered. (*d*) Right of private defence should be altered as in the German Code which states that "exceeding the limits of self-defence is not punishable if the perpetrator has so acted through confusion, fear or panic."

(6) Offences against the state: Here also there must be a radical revision:—(*a*) S. 121-A should be omitted as conspiracy is a form of abetment only. (*b*) Ss. 120 to 130—These should not be considered as offences unless use of violence or incitement to violence forms an ingredient. (*c*) Ss. 123-124, 127, 129, 130 should be omitted. (*d*) S. 121—Forfeiture of property should be limited. (*e*) S. 124-A should be amended on the lines of the resolution passed by the Mysore Lawyers Conference at Mandya:—(*i*) Libel on the personnel of the Government should not be treated as sedition. (*ii*) Justification and truth and good faith should be accepted as a complete defence for attacks on the Government. (*iii*) Advocacy of independence or change in the form or system of government established by law should not be treated as sedition. (*iv*) No act, intention or result shall be deemed to be seditious unless there is an express act of violence committed by the accused.

(*B*) *Cr. P. C. amendments*:—The suggestions under this head are: (1) Adoption of a scientific classification of crimes and prescribing suitable procedure for each class. (2) The use of Ss. 106 to 108 and 144 for political purposes and against political opponents must be curtailed by express amendment. (3) Restricting the power of firing on crowds. (4) Abolition of the Jury and Assessor system in all classes of cases but making jury trial compulsory in political cases in all Courts. (5) The rule to plead guilty or not guilty may be abolished and the prosecution be always made to prove its case. (6) Crown defence may be extended to all cases whenever demanded by the accused. (7) Provision for the study of the accused's character, motives and environment. (8) All offences against property and person to be made compoundable. (9) Compounding between the accused and the injured should be made binding on the prosecution and the Courts unless it is found to be fraudulent. (10) Bail to be extended practically to all offences. (11) The committal enquiry to be curtailed or abolished. (12) The accused should be seated and treated decently in Court and express provision must be made for the same. (13) The accused may be allowed to examine himself provided his evidence will not be used against him.

(To be continued).